

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 304 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NAJARALI MOHMEDALI KHOJA

Appearance:

MR. DN PATEL, ADDL. PUBLIC PROSECUTOR for appellant

MR CH VORA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 25/08/98

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by Chief Judicial Magistrate, Bhuj-Kutch in Criminal Case No. 620/86 on 15.1.1991 whereby the accused were tried for offences punishable under sections 7 and 16 of the Prevention of Food Adulteration Act.

2. Briefly, the facts leading to the present prosecution are as under:-

2.1 On 7.12.1985, Food Inspector, R.P.Christian, PW.1, visited the shop of Najarali Mohmedali Khoja, accused No.2, which is run by the accused No.1 having the same name. Food Inspector called one Kalyan Shivji, PW.2 as a Panch. From an open tin lying in the shop, sample of edible oil was collected for analysis. In the chief examination, it appears that the Food Inspector has come out with a case that as per the provisions contained in the Prevention of Food Adulteration Rules, sample was collected and divided the same into three parts. Thereafter, out of the three samples, one was forwarded to the Public Analyst for analysis and two samples were forwarded to the Local Health Authority. In the chief examination, Food Inspector came out with a version that in three clean, dry bottles, samples were collected and the bottles were sufficiently tight to prevent leakage and evaporation, etc. As per his examination in chief, he has followed the provisions of the Act and the Rules. Food Inspector, on receipt of the report from the Public Analyst indicating that the sample is adulterated, obtained a consent from the competent authority, and thereafter launched prosecution against the accused. On appreciation of evidence, the trial Court came to the conclusion that mandatory provisions of the Rules are not followed, and, therefore, the accused are entitled to be acquitted.

3. Before this Court also, Mr. Patel, learned Additional Public Prosecutor, after his attention was drawn to the cross examination of the Food Inspector, could not point out to the Court that the finding recorded by the trial Court can be disturbed.

4. Mr. Vora, learned Advocate submitted that in view of the cross examination, it is not clear that the Food Inspector himself cleaned the bottles wherein the samples were collected or under his supervision the same were cleaned. He submitted that in the absence of any positive evidence as to who cleaned the bottles and when the bottles were cleaned, it cannot be said that the bottles were dry and clean because complainant has no knowledge as to when and who cleaned the bottles.

5. In the cross examination, Food Inspector stated that on the date on which he left his office for collecting the samples, he collected a kit wherein wax, dried bottles etc. were there. He has stated that he collected bottles from the office cupboard. He was not

able to say since when the bottles were lying in the cupboard. He was also not able to say that when the bottles were collected, they were dry and clean. If the bottles were lying open in the cupboard for several days, then it is difficult to say that it can be said to be clean and dry bottles. There might be some moisture or other substances. When the trial Court has, on appreciation of evidence held that the mandatory provisions contained in Rule 14 is not complied with, Mr. Patel, learned Additional Public Prosecutor could not point from the evidence that the bottles were clean and dry at the time of collecting from the cupboard or at the time when the sample was collected, or that just before a day or so, the bottles were kept in the cupboard. Duty is cast upon the prosecution not only to comply with the mandatory provisions contained in Rule 14 by using clean and dry bottles for storing the samples, but also leading evidence at the trial Court that the bottles used were clean and dry. If there was no cross-examination of the Food Inspector on this point, it could have been urged by the prosecution that the evidence is not challenged satisfactorily. It was necessary for the Food Inspector to demonstrate by leading cogent and convincing evidence that the bottles were clean and dry before the sample was poured into them. It is the duty of the prosecution to prove beyond reasonable doubts all the ingredients or provisions that are to be proved as per law, and specially the provisions which are mandatory in nature have got to be proved beyond reasonable doubt.

6. This is an appeal against the order of acquittal.

The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

7. Having heard the learned APP for State and

learned advocate for the accused, this Court is in agreement with the findings arrived at by the learned trial Judge. I am, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in Girija Nandini Devi v. Bigendra Nandini Choudry (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

In the result, this appeal fails and stands dismissed.

csm./ -----